COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 98-57 (Phase IV)

TESTIMONY OF BRUCE LEAR

ON BEHALF OF VERIZON MASSACHUSETTS

June 14, 2001

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Bruce Lear and my business address is 2980 Fairview Park Drive in Falls Church, Virginia.

Q. Please describe your current employment and professional background.

A. I am employed by Verizon as a Product Line Manager for Collocation for the former Bell Atlantic jurisdictions in the Wholesale Services Organization. In this position, which I have held since 1996, I am directly involved with the negotiation of Competitive Local Exchange Carrier ("CLEC") Interconnection Agreements and the development of collocation service offerings in the former Bell Atlantic states and at the Federal Communications Commission ("FCC"). I have 33 years of telecommunications experience with Verizon and the former C&P Telephone Companies. During that time, I have held a variety of positions of increasing responsibility in Network Operations. Prior to my current assignment, I was the Service Manager for Competitive Access Providers ("CAPS") and CLECs in the former Bell Atlantic South jurisdictions, and served as the customer advocate for both CAPS and CLECs interconnecting to Bell Atlantic. I have previously filed testimony on collocation-related issues in Delaware, Pennsylvania, New Jersey, Massachusetts, and Maine.

II. PURPOSE OF THE TESTIMONY

Q. Please state the purpose of your testimony.

A. The purpose of my testimony is to address the changes to MA D.T.E. Tariff 17 filed by Verizon Massachusetts ("Verizon MA") on April 6, 2001 ("April 6th Revisions") and to respond to issues raised in the Joint Comments of AT&T Communications of New England, Inc., Covad Communications Company, and Allegiance (collectively referred to as the "Joint Commenters") and MCI WorldCom, Inc. ("WorldCom") filed with the Department on April 13, 2001.[1]

Q. Please provide a brief summary of the background leading up to the April 6th Revisions and summarize the changes made in that filing.

A. On January 12, 2001, Verizon MA filed tariff revisions relating to the charges for DC power provided to collocation arrangements under Verizon MA's M.D.T.E. Tariff 17. The revisions changed the application of the power charges from a per-fused-amp, per-feed basis, as then required under the Department-approved Tariff 17, to a per-load-amp, per-feed basis. Also included in those revisions were provisions for audits of power usage and enforcement terms. The tariff revisions became effective on February 11, 2001. Subsequently, Verizon had discussions with several CLECs and the staffs of several regulatory agencies regarding the provision of DC power. As a result of those discussions, Verizon filed revisions to the state and FCC tariffs (including

[1] Conversent Communications of Massachusetts, LLC ("Conversent") also filed comments on April 13, 2001. With one exception (*see* Conversent Comments at 2 n.3 (addressed herein, at 7)), Conversent supports approval of the April 6th Revisions. *See id.* However, Conversent also asserts various legal arguments directed at Tariff 17 generally (such as rate levels and past billing practices) which are not relevant to the

the federal tariff for Massachusetts) that addressed a number of issues governing the provision of DC power to collocation arrangements in the former Bell Atlantic-North states.

On April 6, 2001, Verizon MA filed clarifying language regarding the application of its DC power charges. *See* April 6th Revisions, Part E, Section 2.2.1.B.1. Verizon MA also filed tariff terms regarding random inspections, CLEC attestation of power usage, and enforcement mechanisms. The April 6th Revisions revised Tariff 17 to be identical with similar tariffs filed in all the states in the former Bell Atlantic-North jurisdictions. Among the proposed changes was a revision to the enforcement provisions. The proposed changes are contained in Part E, Section 2.3.5.E.2 of the April 6th Revisions and provide for a 10% buffer on the power drawn prior to a CLEC becoming subject to a penalty, additional notification procedures by Verizon MA, and a limitation on the period during which higher charges apply when the power a CLEC actually draws exceeds the power requested, plus the 10% buffer. Verizon MA also added an additional provision, which permitted CLECs to request power reductions prior to June 5, 2001, without incurring nonrecurring charges if only a change in fuse size was necessary. That additional provision is contained in Part E, Section 2.6.13 of the April 6th Revisions.

Q. Why has Verizon MA proposed penalty and audit provisions for DC power provided to collocations arrangements?

Department's review of the April 6th Revisions and are beyond the scope of this proceeding. Therefore, the testimony does not address those legal arguments which, in any event, are without merit.

A. Verizon MA has proposed penalty and audit provisions for DC power because absent such provisions Verizon MA would have no effective means of ensuring that CLECs are drawing only the amount of power that they have ordered, and there would be no deterrent for a CLEC to draw more power than ordered. The CLEC determines the total amount of power it wants to draw at the collocation arrangement (*i.e.*, the load) and the number of feeds over which it will draw the load it specifies. Verizon then fuses the power feed or feeds to provide a significant buffer above the specified load. Because there is no measurement of the DC power drawn, there must be a mechanism to ensure that the CLEC does not use more power than it has specified and for which it is being billed. The penalty and audit provisions that are contained in the April 6th Revisions are reasonable efforts to ensure compliance. A CLEC incurs no liability if it draws the amount of power it has specified.

Q. In describing the January 12, 2001 Tariff Filing on page 3 of their comments, the Joint Commenters state that Verizon MA "had changed pre-existing tariff language from language that based DC power charges on 'the total power provisioned to the multiplexing node' to language that based DC power charges on the total power provisioned to the multiplexing node *multiplied by the number of feeds"* (emphasis in original). Is this statement accurate?

A. No. Even prior to the January 12th Tariff Filing, Tariff 17 provided that DC power would be assessed per-fused-amp provisioned to the CLEC collocation arrangement *on a per-amp, per-feed basis*. *See* D.T.E. Tariff 17, Part E, Section 2.2.1.B, Part E, Section 2.6.3.C, Part M, Section 5.2.3. This language was not new but has been in

Tariff 17 since it was filed in April 1999. The significant change in the January 12th Tariff Filing that became effective on February 11, 2001, was the change in the application of the DC power charges from "fused amps" provisioned to the number of "load amps" specified by the CLEC. This change in the tariff alone will result in a significant reduction in the DC power charges incurred by CLECs in Massachusetts.

Q. On page 4 and in Section II.B.2 of their comments, the Joint Commenters note that in the April 6th Revisions Verizon added a tariff provision that imposes nonrecurring charges on CLECs for changes in power levels or configurations (Part E, Section 2.6.13.A) and suggests that this change, when combined with the language in Section 2.6.13.B and Section 2.2.1.B.1 of the tariff, "will immediately throw most, if not all, collocation arrangements out of compliance" with the fusing levels mentioned in the April 6th Revisions and will thus "impose on CLECs the burden of submitting applications and incurring Verizon-imposed non-recurring charges." Are these statements correct?

A. No. The Joint Commenters statements are erroneous and mischaracterize Verizon MA's fusing practices prior to the Commission's approval of the April 6th Revisions. As a result, the Joint Commenters overstate the impact of the April 6th Revisions on existing CLEC collocation arrangements. First, the April 6th Revisions will not *require* CLECs to submit new applications, unless the CLEC—for its own purposes—decides to reduce the amount of power previously ordered to the collocation arrangement. Even prior to the April 6th Revisions, carriers who reduced their power requirements were required to submit applications to do so.

However, the April 6th Revisions also provides that CLECs who for whatever reason order a reduction in their fuse sizes prior to June 5, 2001, may change their fusing arrangements without incurring a charge. *See* Part E, Section 2.6.13.A. This provision mitigates any possible impact of these changes on CLECs. Prospectively, Verizon MA proposes to assess a nonrecurring charge ("NRC") only when a CLEC's request for a power reduction requires Verizon MA to perform work in connection with that reduction. The proposed NRC for such services is reasonable and based on the work Verizon-MA undertakes and the costs it incurs to change the fused capacity. By waiving the NRC's for an interim period, Verizon MA has provided CLECs with a reasonable opportunity to reconfigure or reduce their power requirements for all established collocation arrangements. In fact, as of June 5, 2001, Verizon MA had received applications for power reductions for over 350 CLEC collocation arrangements in Massachusetts—all of which could potentially benefit from the waiver.

The waiver of NRC's through June 5th, coupled with the modifications of tariff provisions that give CLECs the ability to designate fuse capacity, consistent with sound engineering practices, in connection with new applications will minimize the application of the NRC's to current collocators and will in most instances reduce DC power costs for existing and new collocation arrangements. Prospectively, Verizon MA should have the ability to recover the costs of changing power requirements to an existing collocation arrangement. As of June 5, 2001, there are more than 2,000 collocation arrangements completed or in progress in Massachusetts where Verizon MA has delivered thousands of power feeds to CLECs. Absent any controls or charges, Verizon MA would be exposed to continuous reconfigurations of DC power and would have no means to recover its costs of modifying CLECs' power requirements.

Q. WorldCom takes the position that the Department should reject the imposition of penalties for overutilization of DC power and that Verizon MA should not be permitted to assess such penalties unless there is also a countering mechanism for the underutilization and paying for more power than actually used (*See* WorldCom Comments, at page 3). In addition, Conversent suggests that Verizon should not be permitted to recover penalties based on the fused capacity provided by Verizon for the CLEC's use. *See* Conversent Comments at 2 n.3. Why should Verizon MA expect payment of DC power charges equal to the fused capacity for six billing months where a CLEC is found to be in violation of the tariff as a result of the Company's inspection if its actual power drain exceeds 110% of its requested power load?

A. The penalty is intended to deter intentional violations of the tariff. Verizon MA has no way of metering actual power usage. Thus, the CLECs alone have full knowledge of their power requirements and actual usage, and thus it is reasonable to expect them to use only the power they have requested. Since a CLEC's power consumption is a matter that is within its control, there is no need for a CLEC to use more than 110% of its requested power load. However, as WorldCom acknowledges, there should be a "mechanism that ***compels*** CLECs from using more power than they are paying for." The proposed terms provide a reasonable deterrent to any CLEC who decides to use more power than it has ordered. The penalty should be based on the fused capacity since this governs the extent to which a CLEC can use more power than it has requested.

B. The Joint Commenters believe the penalty language "is a punitive measure, intended to punish and harass competitors whose equipment may have unexpectedly experienced a power drain that is 11% higher than expected on such equipment" (Joint Comments, at 8). Do you agree?

C. Absolutely not. First, the likelihood of Verizon MA measuring power that "unexpectedly" exceeds 11% of the specified load is highly unlikely -- Verizon MA would have to be conducting an audit of the collocation arrangement at the precise moment in time that the "unexpected" surge occurs. With the digital technology being deployed in the telecommunications industry, a spike or surge in power on a single piece of equipment would be the result of an anomaly such as a sudden influx of power or a blown fuse and would only be momentary and would not be covered by the tariff language. If the CLEC were to properly engineer the distribution of power to all its equipment, there should ***never*** be a situation where Verizon MA would read more power than what was specified in the CLECs original application, unless the CLEC intended to use more power than what was requested or were negligent in monitoring its power consumption. Of course, Verizon MA expects that CLECs will consume only the power requested and that there will never be a need to invoke the penalty clauses in the tariff.

In any event, the Department retains its jurisdiction over Verizon MA and has adopted expedited dispute resolution procedures in MA D.T.E. 00-39 designed to quickly resolves disputes between carriers. Verizon MA thus has a strong incentive to administer and apply its penalty provisions in a fair and reasonable manner.

Q. Why should CLECs be required to make annual and non-scheduled attestations if Verizon MA already has the original power request and any augments to revise the amount of power requested?

A. These attestations are intended to ensure Verizon MA that the CLEC's power consumption has not changed over the course of the year, and that the CLEC does not intend to overdraw power. Verizon MA only seeks to ensure that a CLEC will submit an augment request if it needs more power, not help itself to existing power capacity over and above the number of load amps ordered from Verizon MA.

The Joint Commenters object to the requirement of a statement signed by a "responsible officer" and argue that such a requirement is "far outside industry practice."[2] Industry practice does not address such measures, which are necessary given Verizon MA tariff changes and the obvious ability for collocators to draw more power than they ordered on their applications. Moreover, requiring the CLECs to submit a written statement attesting that it is not exceeding the total load of power as ordered in its collocation applications is plainly not burdensome. There is nothing coercive or punitive about it.

In any event, if the CLECs object to the requirement that a "responsible officer" sign the statements, Verizon MA is willing to revise the tariff to accept a notarized letter from the

[2] Joint Comments, at 14.

CLEC personnel responsible for collocation. This should resolve the CLECs' concerns.

Q. Joint Commenters (at Section 5.B.1) suggest several language modifications that they claim would clarify the intent of the tariff. Are these changes necessary?

R. No. The language contained in the April 6th Revisions is clear and unambiguous. In an effort to have language that is as consistent and thereby provide a uniform process for the CLECs, as well as Verizon, Verizon has filed the same language contained in the April 6th Revisions in all of the former Bell Atlantic North states. There is no need to revise the language of the tariff as the Joint Commenters suggest. However, should the Department determine otherwise, Verizon MA will not object to the inclusion of the language contained in Section 5.B.1 of the Joint Comments.

Q. The Joint Commenters argue that Section 2.3.5.F is ambiguous as to whether Verizon MA expects the CLEC to submit a statement pertaining to all its collocation arrangements across the Verizon footprint. Please address this argument?

A. Section 2.3.5.F requires that a CLEC submit a statement that addresses all of its collocation arrangements within the entire Verizon foot print where it operates as a Local Exchange Carrier. This information is a necessary and reasonable requirement designed to secure the CLECs affirmative acknowledgement that it is complying with the terms of the tariff. Furthermore, this requirement is not overreaching, punitive, or coercive. Since Verizon has filed identical tariff language in a number of states, the CLECs may utilize the statement in all of those states once it is prepared.

Q. The Joint Commenters (at 10-11) state that "the inspections certainly should not be permitted to occur unilaterally and without supervision. At a minimum, Verizon MA should not be permitted to conduct any inspections outside the presence of the representatives from the affected CLECs" and that "the tariff must provide that the Department, not Verizon, will be the ultimate arbiter." Please address these comments.

A. To determine if a CLEC is in fact drawing more power than it has ordered and paid for, Verizon MA will test power consumption from its power distribution board, which resides on Verizon MA side of the network. The CLECs' criticisms of Verizon MA's audit provisions reflect either a misunderstanding of Verizon MA tariff or an attempt to avoid the consequences of overdrawing DC power.

Contrary to the CLECs' assertions, nothing prohibits Verizon MA from monitoring a CLEC's power consumption from Verizon MA's side of the network at any time. Indeed, it is difficult to understand how a CLEC could be concerned about such monitoring because it does not affect the operation of the CLEC equipment and would not even be perceived by the CLEC. All it allows Verizon MA to determine is whether the CLEC is drawing power within its stated power requirement when it is monitored.

Verizon MA is the appropriate party to monitor DC power consumption. It is Verizon MA responsibility to monitor the power distribution and to ensure that there is adequate capacity in the DC power plant so that all equipment has the desired power.

Moreover, if the CLECs were required to be present during Verizon MA monitoring of DC power consumption, then Verizon MA would have to provide the CLEC with advance notice – notice that would enable the CLEC to power down their equipment and avoid detection. This would defeat the entire point of deterring the CLECs from overdrawing power.

However, to address the CLECs' concerns about the integrity of the audit process, Verizon MA will agree to provide the CLEC with a notarized statement from the Verizon MA representative who performed the audit attesting to fact that he/she has determined that the CLEC is overdrawing DC power.

If a CLEC disputes Verizon MA power audit, they can bring the issue before the Department via the expedited dispute resolution process the Department has established.

Q. The Joint Commenters claim that Section 2.3.5.E.2 is not clear about the case where, for example, a CLEC draws 40 amps over one feed and none over the other, whether that would be a 100% -110% case or and over 110% case. Please address their concern.

A. The tariff is unambiguous that the load amps are based on the total load amps for all feeds to the collocation arrangement. In the example, the CLEC is drawing 40 amps for all feeds to the collocation arrangement and is not in violation of the tariff.

Q. Joint Commenters claim that Section 2.3.5.E.3 needs to be clearer concerning when billing for the penalty will cease and billing for the revised power requirement will begin. Please respond.

A. The full fused capacity billing would become effective with the next subsequent monthly bill and continue for each of the following five monthly bills amounting to six monthly bills in total billed at the number of amps of fused capacity. If the CLEC submits a revised application prior to the end of six months, the revision would be reflected in the bill for the seventh month and thereafter.

Q. Does this conclude your testimony?

A. Yes.